

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 16606
[Redacted],)	
)	DECISION
Petitioner.)	
_____)	

On January 3, 2002, the Tax Discovery Bureau (TDB) of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing additional individual income tax, penalty, and interest in the amount of \$812 for tax year 1999.

The taxpayer filed a timely appeal and petition for a redetermination. She did not request a conference. The Tax Commission has reviewed the file, is advised of its contents, and hereby issues its decision.

When the taxpayer's 1999 Idaho income tax return appeared to be in conflict with the information shown in her ex-husband's return, TDB examined both returns and the couple's divorce decree. The taxpayer and her husband were married all of 1999 even though they lived apart during the year. At the conclusion of the review, TDB contacted the taxpayer and asked her to file an amended return to correct her filing status and properly split the community income. The taxpayer agreed to the request but did not file the amended return.

TDB issued a Notice of Deficiency Determination, which the taxpayer appealed. In her letter, the taxpayer said the only thing she did wrong was to use the filing status of head of household instead of married filing separate. She said she had the right to claim her daughter. She questioned why the resulting tax due was so much.

In the ensuing weeks, the taxpayer and her attorney separately telephoned TDB to discuss the Idaho filing requirements for a married couple that lived separately during the year. When an amended Idaho return was not received, the taxpayer's file was transferred to the Legal/Tax Policy Division for administrative review. In response to a letter advising her of her appeal rights, the taxpayer telephoned the Tax Appeals Specialist. She again questioned why the tax calculations ended up as high as they did.

During 1999, the taxpayer and her husband lived apart but did not divorce until a later year. Because the taxpayer and her husband were married (not legally separated or divorced) at the end of 1999, they have two choices of filing status for the year - married filing joint or married filing separate. The status of head of household is reserved for an unmarried person. In order to file a married filing joint tax return, both parties must agree. The taxpayer and her spouse did not agree to file a joint return for the year. The only filing status available to the taxpayer is married filing separate.

In the return the taxpayer filed, she reported only her income for the year. Under Idaho's community property statute, the earnings of her husband before and after separation must be included as community income. Idaho Code § 32-906; Martsch v. Martsch, 103 Idaho 142, 645 P.2d 882 (1982).

TDB correctly calculated the taxpayer's 1999 Idaho income tax responsible by recognizing half of the total income of the taxpayer and her spouse as her portion of Idaho taxable income. Additionally, the taxpayer was allowed credit for half the itemized deductions and half of the total community withholding for the year. Pursuant to the terms of the divorce decree and physical

custody, the taxpayer had the right to claim her daughter as her dependent that year. No change was made to the taxpayer's exemption for her daughter.

TDB added interest and penalty to the taxpayer's return per Idaho Code §§ 63-3045 and 63-3046. The Tax Commission reviewed these additions and found the addition of interest appropriate but the penalty amount was incorrect. TDB added a 25% delinquency penalty for failure to file a timely return. The appropriate penalty is the 5% penalty provided in Idaho Code § 63-3046(a):

63-3046. Penalties and additions to the tax in case of deficiency.

(a) If any part of any deficiency is due to negligence or disregard of rules but without intent to defraud, five per cent (5%) of the total amount of the deficiency (in addition to such deficiency) shall be assessed, collected and paid in the same manner as if it were a deficiency.

WHEREFORE, the Notice of Deficiency Determination dated January 3, 2002, is hereby MODIFIED, and as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty, and interest for 1999:

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$580	\$29	\$105	\$714

Interest is computed through August 15, 2002.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2002.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that I have on this ____ day of _____, 2002, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

Receipt No.: [Redacted] [Redacted]
ADMINISTRATIVE ASSISTANT 1